IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.1886 of 2006

Rachna Oswald Malhotra/
D'Silva ..Petitioner

vs.

Oswald Fedrick D'Silva ..Respondentr

Mrs.Mrunalini Deshmukh i/b M/s Shiralkar and Co. for petitioner
Mr.Sayeed Akahtar for respondent.

CORAM: S.B.MHASE J.
21st March, 2006

P.C.

1. Heard the learned counsel for the parties.

2. The order passed by the Family Court on 13th March, 2006 below Int.Application No.45 of 2006 in Petition No.A-1783 of 2003 is under challenge. By the said application amendment was proposed by the petitioner who is respondent before the Family Court and by the proposed amendment it is averred that declaration may be given in respect of the suit property that the petitioner is the owner of the said flat which is the matrimonial home. It appears that the flat stands in the name of the petitioner and respondent/husband is claiming a declaration in respect of the said flat in respect of which the wife is

ostensible owner and the husband is the real owner of the property is the contention which is available for adjudication and if the husband fails to prove the real ownership naturally the flat remains of the ownership of the wife. In fact, the amendment was not necessary. Apart from that the reasons which are given by the Family Court for rejecting the application are also just and proper. No interference is called for.

3. At this stage, it is brought to the notice of this Court that because of such an application even the right to cross examine the husband has been forfeited by the Family Court. However, the respondent is fair enough to give concession that the petitioner/wife will be allowed to cross examine and, therefore, the said order passed by the Family Court forfeiting the right to cross examine is hereby set aside. Both the learned Counsel state that the cross examination of the wife is going on. Thereafter after completion of the cross examination of the wife, cross examination of the husband should be carried out.

4. In view of the above, petition is disposed

of.

(S.B.MHASE J.)